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No.

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

WILMA O'BRYAN, Parent and Next of Friend of JOHN C. O'BRYAN,

-and-

STATE FARM INSURANCE,

Petitioners,

vs.

VOLKSWAGEN OF AMERICA,

-and-

VOLKSWAGEN A.G.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONER'S MOTION TO DEFER CONSIDERATION

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Comes the Petitioner, Wilma O'Bryan, Parent and Next Friend of John C. O'Bryan and moves this Court to defer consideration of the present case until such time as this Court has

made a ruling in the case of *Freightliner Corporation v. Myrick,* Supreme Court No. 94-286. The question before the Court on both the *Freightliner* case and the Petitioner's case are identical; Does compliance with a Federal Motor Vehicle Safety Standard which establishes a minimum performance standard, preempt a state common law action based upon defective design and crashworthiness, or as the Eleventh Circuit has held in *Myrick,* does this Court's decision in *Cippollone,* as well as the clear, concise language of the Savings Clause, set out in the Safety Act, 15 U.S.C. sec. 1397(k), mean what it says, that "[c]ompliance with any Federal Motor Vehicle Safety Standard under this subchapter does not exempt any person from any liability under common law," and thus, state common law tort actions for defectively designed automobiles are not preempted and prohibited.

The Petitioner submits that the decision of this Court in the *Freightliner* case will also be the decision in the Petitioner's case. Additionally, if the Court upholds the lower court's decision in *Freightliner,* this Court must grant this Petitioner's Petition for Certiorari and rule that the trial court's verdict be reinstated or that the case be remanded back to the trial court for a new trial on the matter, following this Court's rulings.

For these reasons, the Petitioner, respectfully moves this Court to Defer Consideration of this case until this Court's decision in *Freightliners,* has been reached.

Respectfully submitted,

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